Republic of the Philippines
Department of Finance
Securities and Exchange Commission
Commission En Banc

VENTURE SECURITIES, INC.,
Appellant,

- versus -

SEC En Banc Case No. 01-21-481
(CMIC-ACD-SPECIAL-19-263)

CAPITAL MARKETS INTEGRITY CORPORATION,
Appellee.

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DECISION

Before this Commission is the *Memorandum of Appeal (With Extremely Urgent Application for a Preliminary Writ of Injunction)* (the "*Appeal*") dated 11 January 2020 filed by Appellant Venture Securities, Inc. (Venture) praying that the Commission reverses and sets aside the Resolutions[1] issued by CMIC (the "Assailed Resolutions") which found that Venture violated the CMIC Rules in relation to the Implementing Guidelines of the Revised Trading Rules (the "Implementing Guidelines") and imposed an aggregate penalty of PESOS: FIVE MILLION ONE HUNDRED SIXTY THOUSAND & 00/100 (₱5,160,000.00).

THE PARTIES

Appellant Venture is a corporation duly organized and existing under Philippine laws, with SEC Registration No. 0000085544, and registered as a securities broker/dealer. Its business address is at 8/F STI Holdings Center, 6764 Ayala Avenue, Makati City.

Appellee CMIC is a domestic corporation duly authorized and licensed to act as a Self-Regulatory Organization (SRO) and functions as the independent audit, surveillance, and compliance arm of the Philippine Stock Exchange, Inc. (PSE), with SEC Registration No. CS201104274. Its business address is located at 10th Floor PSE Tower, 5th Ave. Corner 28th St., Bonifacio Global City, Taguig City.

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[1] Resolution dated 10 July 2020 contained in CMIC's Letter dated 10 July 2020, Board Resolution No. 36, Series of 2020 contained in CMIC's Letter dated 12 October 2020; and Board Resolution No. 56, Series of 2020 contained in CMIC's Letter dated 15 December 2020 (collectively referred to as Subject Resolutions).

THE RELEVANT FACTS

On 31 October 2019, CMIC received an information from R&L Investments, Inc. (R&L) that most of its shares were "wiped out" by its purported settlement officer, Mr. Marlou N. Moron (Mr. Moron), who has allegedly been transferring the shares of R&L and its clients to other trading participants without the knowledge and consent of management. CMIC also alleged that its correspondences with R&L showed that Mr. Moron admitted having transferred shares to a certain account in Venture under the name of Mr. Julieto Sulapas (Mr. Sulapas), which was used as a gateway to facilitate the said transfers, resulting to the loss of millions worth of clients' shares.[2]

In a Letter dated 7 November 2019, CMIC informed Venture of the necessity to call for a special audit of its books and records to determine if certain laws, rules or regulations have been violated, and ensure that the interests of the investing public have not been prejudiced considering the apparent involvement of Venture in the fraudulent acts of Mr. Moron.

On 8 November 2019, CMIC commenced its special audit and found the following:

a) There was no done-through transaction report submission for a sell transaction of H2O shares that Venture executed for Guild Securities, Inc. (Guild) on 28 May 2018;

b) The CMIC system showed that there were forty-five (45) transactions executed by Venture using the PSE codes assigned to Mr. Sulapas that had not been recorded in his ledgers;

c) There were eighteen (18) instances wherein the number of shares per transaction listing and/or unbundling report did not correspond to the volume recorded per ledger. Moreover, no trade amendments had been filed for the said transactions;

d) There were two hundred thirty-four (234) occasions wherein bundled transactions had been solely unbundled to one of the accounts of Mr. Sulapas;

e) Two hundred nine (209) bundled transactions, which may have been executed for the accounts of Mr. Sulapas, were not found in the unbundling reports submitted by Venture;

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[2] Pars. 3&4 of the Comment of CMIC; see also Annex "A" of the Appeal

f) Six (6) transactions were executed using PSE codes of other clients were recorded in the ledgers of Mr. Sulapas;

g) Six (6) transactions were initially made using a bundled account and subsequently unbundled to other clients, but were recorded in the ledgers of Mr. Sulapas;

h) The following traders of Venture, i.e. Messrs. Loreto Balabis, Erwin Romanes, Gerry Latumbo, Francis Lopez, and two (2) unnamed traders, initiated and committed the foregoing trading-related securities violations which are summarized as follows:

(i) Trades not recorded in the ledgers of Mr. Sulapas and without trade amendment;

(ii) Transactions with discrepancies in volume;

(iii) Bundled transactions executed for a single account;

(iv) Non-submission of unbundling report;

(v) Trades executed using PSE codes of other clients but recorded in the ledgers of Mr. Sulapas; and

(vi) Bundled transactions unbundled to other clients but recorded in the ledgers of Mr. Sulapas;

i) Venture may have disregarded the provisions relative to information about clients or the Know-Your-Client (KYC) procedures on the ground that the financial capacity of Mr. Sulapas, as disclosed in the Customer Account Information Form (CAIF), is materially insufficient compared to the value of his transactions. The disclosed liquid net worth, total net worth, and annual income of Mr. Sulapas are less than one million pesos each; whereas, the total buy transactions from 2012 to 2019 amounted to Four Billion Six Hundred Two Million Nine Hundred Thirty-Nine Thousand Five Hundred Eight Pesos and Fifty Centavos (₱4,602,939,508.50) while his total sell transactions amounted to Five Billion Three Hundred Two Million Five Hundred Fourteen Thousand

Eight Hundred Twenty-Four Pesos and Seventy Centavos (₱5,302,514,824.70).[3]

On the basis of the said findings, the CMIC issued a Show Cause Notice[4] directing Venture to explain why it should not be held liable for violating the CMIC Rules in relation to the Implementing Guidelines.

On 13 February 2020, Venture filed its Letter-Explanation[5] refuting the findings of CMIC and alleged that:

a. The sale of H2O shares was not a done-through transaction, hence there was no obligation on the part of Venture to submit a done-through report. In support thereof, Venture alleged that the trader erroneously used the code of Guild instead of using the Sulapas code. Considering that an amendment from a broker account to an individual account is prohibited in the facility, Venture alleged that it made an internal correction in its books to avoid failure of delivery of securities;

b. Forty-four (44) out of the forty-five (45) transactions cited were properly amended and the reports on the same were submitted. Venture however alleged that it could not provide evidence thereon because it had no more access to the trade amendment reports filed through the online facility;

c. Contrary to the finding of the CMIC, Venture maintained that there were no discrepancies in the volume of the eighteen (18) specific transactions noted by the former, and argued that there was thus no need to file a trade amendment;

d. In relation to the two hundred thirty-four (234) bundled transactions that were unbundled solely to one of the accounts of Mr. Sulapas, Venture argued that it did not violate the CMIC rules because this was a regular practice at that time which was allegedly recognized and accepted by PSE/CMIC, and it was only in 2019 when Venture was allegedly advised to refrain from doing the same;

e. The two hundred nine (209) bundled transactions that were identified by CMIC to have been executed for the accounts of

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[3] Annex "A", Appeal Memorandum.
[4] Annex "E", Appeal Memorandum.
[5] Annex "F", Appeal Memorandum.

Mr. Sulapas were covered by unbundling reports which were filed by Venture;

f. In relation to the six (6) transactions executed using the PSE codes of other clients that were recorded in the ledgers of Mr. Sulapas, Venture alleges that except for the two (2) transactions, these trades were duly amended to Mr. Sulapas' account and the reports covering the same were filed. However, the amendment reports could no longer be retrieved from the amendment facility;

g. The above explanations which will allegedly show that Venture's traders and salesmen observed all applicable laws, rules and regulations and complied with its internal rules, warrants the exculpation of its traders/salesmen from liability for possible violations of the Code of Conduct and Professional Ethics for Traders and Salesmen;

h. The Know-Your-Client procedure was observed and reasonable steps to establish Mr. Sulapas' financial situation, investment experience, and objectives were taken. Venture alleged that after considering and establishing that Mr. Sulapas was a day-trader, he was allowed to maintain a debit balance on the condition that he maintains stock positions in value that is sufficient to cover his debt balance at any time. Considering that the "credit-line" arrangement given to Mr. Sulapas worked and Venture allegedly did not encounter any problem with the account of Mr. Sulapas, his net worth and annual income were no longer considered;

i. It was misleading for CMIC to use the total figures of Mr. Sulapas' buying and trading transactions as bases in concluding that the same are beyond his financial capacity to make because these transpired in the course of over nine (9) years;

j. It has observed diligence in the handling of reports and records of clients' trades;

k. Its Associated Person has always been on top of all the above issues and always reminded its personnel to observe and comply with the rules.

During the exit conference on 19 February 2020, Venture reiterated the foregoing arguments and maintained that it did not violate the CMIC Rules in relation to the Implementing Guidelines. Moreover, in relation to the allegation of Venture that it no longer has access to the online facility, it authorized CMIC to request from the PSE for the covered trade amendments and unbundling reports.

On 10 July 2020, the CMIC issued the *Assailed Resolution*[6] finding that Venture violated the following securities laws and imposed an aggregate fine of Five Million Two Hundred Thirty Thousand Pesos (₱5,230,000.00), to wit:

a. Sixty-four (64) counts for violation of Article IX, Section 1 (c) of the CMIC Rules, in relation to Article XVII (1) of the Implementing Guidelines of the Revised Trading Rules on the basis of the finding that:

   (i) Venture failed to record in the ledger of Mr. Sulapas the forty-five (45) transactions that were executed and assigned to him using the PSE codes;
   (ii) the number of shares per transaction in the listing and/or unbundling report did not correspond to the entry recorded in the ledger, and no trade amendments were filed[7]; and
   (iii) Venture executed six (6) transactions using the PSE code of other clients, but recorded the same in the ledger of Mr. Sulapas.

b. Four hundred forty-nine (449) counts for violation of Article VII, Section 1 (q) of the CMIC Rules, in relation to Article IV, Section 4 (a) and Section 19 of the Revised Trading Rules and Article XVI (1) and (5) of the Implementing Guidelines of the Revised Trading Rules on the basis of the finding that:

   (i) Venture admitted that there were two hundred thirty-four (234) occasions where bundled transactions had been solely unbundled to one of the accounts of Mr. Sulapas;
   (ii) The two-hundred nine (209) bundled transactions that were identified by CMIC to have been executed

[6] Annex "A", Appeal Memorandum.
[7] CMIC found that based on Annex "B" of Venture's Letter dated 13 February 2020, five (5) of the eighteen (18) transactions were covered by trade amendment reports. (see pages 8-9 of the Resolution dated 10 July 2020

for the accounts of Mr. Sulapas were not included in the reports that were retrieved by CMIC; and

(iii) Venture recorded in the ledger of Mr. Sulapas six (6) transactions that were initially processed using a bundled account of other clients and were subsequently unbundled.

c. Article V, Section 3 of the CMIC Rules based on the finding of multiple violations by Venture of several provisions of the securities laws which included, among others, the improper use of PSE codes in the execution of trades, inconsistencies of the entries in its back office records and the CMIC system, and failure to effect the necessary amendments in the covered trades;

d. Article VI, Section 1 (b) (iv) of the CMIC Rules on the basis of the finding of multiple discrepancies in the records which allegedly proves the failure of Venture to exercise due diligence;

e. Article VI, Section 1 (b) (ii) of the CMIC Rules on the basis of the finding that Venture allowed Mr. Sulapas to continue executing trades and use its facilities notwithstanding its awareness that Mr. Sulapas has been trading considerably beyond his declared financial capacity; and

f. Article VI, Section 2 of the CMIC Rules for failure of Venture's Associated Person to properly supervise the activities of its employees which resulted in the multiple violation of securities laws by Venture.

On 11 August 2020, Venture filed its Request for Reconsideration[8] praying for the reversal of the *Assailed Resolution*.

On 12 October 2020, CMIC issued Resolution No. 26, Series of 2020 partially granting Venture's Request for Reconsideration by reducing the aggregate fine to Five Million One Hundred Sixty Thousand Pesos (₱5,160,000.00). The Second Request for Reconsideration filed on 26 October 2020 by Venture[9] was denied by CMIC in Resolution No. 52, Series of 2020 issued on 15 December 2020.

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[8] Annex "G", Appeal Memorandum.
[9] Annex "H", Appeal Memorandum.

On 12 January 2021, Venture filed the instant *Appeal* praying for the reversal and setting aside of the Assailed Resolutions, and presented the following assignment of errors and the arguments in support thereof:

a. CMIC is barred by its rules and by *res judicata* from reviewing and penalizing Venture for transactions relating to the account of Mr. Sulapas that CMIC had already allegedly passed upon;

b. Venture did not violate the CMIC Rules in relation to the Implementing Guidelines on the ground that (i) it exercised utmost good faith in complying with the KYC procedures in relation to Mr. Sulapas; (ii) it exercised proper due diligence in recording trades in the ledgers and submitted required reports; (iii) it properly executed and recorded the bundled transactions and unbundling reports, and made the necessary amendments; (iv) its traders and salesmen have observed and complied with all applicable laws, rules and regulations; (v) it cannot be held liable for violation of Article VI, Section 1(B)(II) of the CMIC Rules because the missing unbundling reports and trade amendments are not covered by its obligation to execute the orders of clients on the best possible terms; and (vi) the alleged violations of the trading participant were not due to the improper supervision by Ms. Aguilar, but due to her reliance in good faith on the results of CMIC's findings.

On 29 January 2021, this Commission issued a Resolution denying Venture's *Application for a Preliminary Writ of Injunction*.

On 1 June 2021, CMIC filed its *Comment to the Appeal* praying for the denial of the Appeal for lack of merit.

ISSUE/S

1. Whether the CMIC is barred by its Rules and by *res judicata* from reviewing and penalizing Venture for transactions relating to the account of Mr. Sulapas.

2. Whether Venture violated the securities laws identified by CMIC in the Assailed Resolutions.

RULING

After a careful review of the arguments and the evidence presented, the Commission finds the instant *Appeal* without merit and hereby denies the same.

I. The CMIC is not barred by its Rules and by *res judicata* from conducting investigations subsequent to the conduct of its regular audit examinations.

In its *Appeal*, Venture maintained that CMIC is barred by its Rules and by *res judicata* from reviewing and penalizing Venture for transactions relating to the account of Mr. Sulapas, which was covered by CMIC's prior regular audit. In support thereof, Venture argued that CMIC's findings in its previous regular audit examinations on the Sulapas account are already conclusive upon the parties because the same was made in the exercise of its quasi-judicial or adjudicatory powers[10], and any issue which has already been passed upon cannot again be litigated in any future or other action between the same parties. Since CMIC found no findings of material violation during its past regular audit examinations of Venture on the account of Mr. Sulapas, CMIC is already precluded from making a subsequent finding on the same issue on the account of Mr. Sulapas.[11]

In its Comment, CMIC countered by arguing that the lack of any finding of violation or a statement declaring a Trading Participant compliant with the pertinent rules within a certain audit period is not an unqualified preclusion to a later finding that other rules, not covered by the pertinent examination have been violated by the trading participant. Further, CMIC emphasized that the trading participants were duly informed after the conduct of its examinations, that "*the findings are without prejudice to the initiation of an investigation and/or imposition of appropriate fines and penalties in case of subsequent material determinations*."[12]

CMIC also emphasizes that the findings in this case were the result of the conduct of a special audit which is essentially distinct from regular audit examination in the sense that the latter is conducted based on sampling

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[10] Par. 6.1 of the Appeal
[11] Pars. 6.7 and 6.8 of the Appeal
[12] Par. 27 of the Comment of CMIC

methodology covering a scope which is limited by pre-established procedures[13]. Relative thereto, CMIC thus maintained that the absence of any finding of violation in the regular audit examination cannot be used by trading participants as basis to escape liability for violation of securities laws.[14]

We agree with the CMIC.

Venture's insistence that the previous findings of CMIC constitute judgments/decisions made in the exercise of its quasi-judicial or adjudicatory powers is devoid of legal basis. **While the conduct of a regular audit by CMIC is provided in Article II of the CMIC Rules (Investigation and Resolution of Cases), the same partakes of an investigative nature, and relates to the exercise of a regulatory function intended to ensure compliance with securities laws, rules and regulations**, rather than a quasi-judicial function. This is consistent with the mandate of CMIC to maintain the integrity of the market and minimize the risk of the investing public by ensuring, among others, adherence and compliance to laws, rules and regulatory requirements,[15] which is carried out in the context of the principle of self-regulation embodied in Sections 39 and 40 of the Securities Regulation Code.

In *Securities and Exchange Commission vs Interport Resources Corporation*[16], the Supreme Court, citing *Cariño v. Commission on Human Rights*, emphasized that the conduct of investigation by a regulatory agency is not an exercise of quasi-judicial function, thus:

> "Investigate," commonly understood, means to examine, explore, inquire or delve or probe into, research on, study. The dictionary definition of "investigate" is "to observe or study closely; inquire into systematically: "to search or inquire into" xx to subject to an official probe xx: to conduct an official inquiry." **The purpose of an investigation, of course is to discover, to find out, to learn, obtain information. Nowhere included or intimated is the notion of settling, deciding or resolving a controversy involved in the facts inquired into by application of the law to the facts established by the inquiry.**
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> **The legal meaning of "investigate" is essentially the same: "(t)o follow up step by step by patient inquiry or observation. To trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry;" "to inquire; to make an investigation," "investigation" being in turn described as "(a)n administrative function, the exercise of which**

[13] *Ibid*
[14] Par. 27 of the Comment of CMIC
[15] Article I, Section 1 of the CMIC Rules
[16] G.R. No. 135808, October 6, 2008

> **ordinarily does not require a hearing**. 2 Am J2d Adm L Sec. 257; xx an inquiry, judicial or otherwise, for the discovery and collection of facts concerning a certain matter or matters."
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> "Adjudicate," commonly or popularly understood, means to adjudge, arbitrate, judge, decide, determine, resolve, rule on, settle. The dictionary defines the term as "to settle finally (the rights and duties of parties to a court case) on the merits of issues raised: xx to pass judgment on: settle judicially: xx act as judge." And "adjudge" means "to decide or rule upon as a judge or with judicial or quasi-judicial powers: xx to award or grant judicially in a case of controversy x x x."
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> **In a legal sense, "adjudicate" means: "To settle in the exercise of judicial authority. To determine finally. Synonymous with adjudge in its strictest sense;" and "adjudge" means: "To pass on judicially, to decide, settle, or decree, or to sentence or condemn. x x x Implies a judicial determination of a fact, and the entry of a judgment."** (Emphasis supplied)

In the instant case, while the records show that the CMIC conducted regular audit investigations on the books, records and operations of Venture for the years 2012 to 2019 (the "Covered Period"), the findings in the said regular audits cannot be considered decisions that can be barred by *res judicata* because the same were made pursuant to the exercise of its regulatory functions and not pursuant to a complaint filed with it. In fact, there is nothing in the records that will show that a complaint requesting an investigation on the accounts of Mr. Sulapas was ever filed during the Covered Period. As such, the CMIC was not compelled to finish the regular audit within the six (6) month period provided in Section 8, Article II of the CMIC Rules because no case involving the account of Mr. Sulapas was filed and pending with it.

Moreover, the Commission agrees with CMIC that the records of the case show that the previous regular audit examinations of CMIC covering the books, records and operations of Venture did not cover or make any specific reference to the account of Mr. Sulapas. This is supported by the Letter dated 7 November 2019[17] where CMIC specifically stated and informed Venture that "*[c]onsidering the supposed involvement of Venture in the fraudulent acts of Mr. Moron against R&L, there is a necessity to call for a special audit of the pertinent books and records of Venture.*" CMIC's statement clearly means that while the annual regular audit examinations for the years 2012 to 2019 have already been conducted, **a special audit and investigation on the account of Mr. Sulapas is being conducted for the first time because the previous regular audits were based on a sampling methodology and did not thus preclude CMIC from conducting a special audit, specifically**

[17] Annex "D" of the Appeal Memorandum

examining ALL transactions relating to and covering the information received from R&L that most of its shares were embezzled, which necessarily included the account of Mr. Sulapas.

In relation to the conduct by CMIC of regular audits pursuant to the CMIC Rules, this Commission has consistently held the position that the audit findings issued by CMIC containing a general statement that a trading participant is compliant with the pertinent rules covering a particular period does not preclude the CMIC from investigating a possible violation committed during the period covered by the audit, considering that these audits are based on a sampling methodology; hence, not all client records are being subjected to specific and meticulous inquiry and investigation. To rule otherwise would be to sanction a policy that a Trading Participant can conveniently escape liability for violation of the securities laws, rules and regulations on the basis of the finding issued pursuant to a regular audit. This is certainly not the intent of the law as this is clearly prejudicial to the interests of the investing public.

Anent Venture's contention that it has no direct involvement in the fraudulent acts against R&L, We hold that the same is immaterial for purposes of the instant case. As correctly pointed out by CMIC, Venture was penalized not because of its alleged involvement with the supposed fraudulent acts committed by Mr. Moron against R&L, but because it was found to have violated the CMIC Rules in relation to the Implementing Guidelines, which will be discussed below. A careful review of the *Assailed Resolutions* of the CMIC will show that the grounds relied upon in sustaining the imposition of penalties against Venture were not related to the fraudulent acts of R&L. The fraudulent acts imputed against R&L merely prompted the conduct of investigation on Venture's compliance with the CMIC Rules in relation to the Implementing Guidelines.

On the basis of the foregoing, the Commission finds and so holds that the issuance of the Assailed Resolutions did not violate the CMIC Rules, nor the rule on *res judicata*. *Res judicata* has clearly no application in the instant case because being an action made in the performance of the regulatory function of CMIC, the elements of *res judicata* are not present as a consequence of the issuance of the Assailed Resolution. The Commission, including CMIC in its capacity as an SRO, will investigate and penalize every time a regulated or covered entity is found to violate the securities laws, rules, and regulations because they are mandated to ensure that regulated entities comply with such laws, rules, and regulations.

II. CMIC was able to prove by substantial evidence that Venture

and its Associated Person violated the CMIC Rules in relation to the Implementing Guidelines.

At the outset and for a proper perspective in looking at the instant case, it should be emphasized that the Assailed Resolutions of the CMIC which resulted in the filing of the Appeal under consideration involve and cover the finding of multiple violations of the securities laws, rules, and regulations by Venture. The instant Appeal therefore calls upon the Commission to evaluate and determine the correctness of CMIC's findings and conclusions. For the Commission to effectively and properly discharge the said function, there is a need, preliminarily, to go back to the fundamental reason and ultimate goal of securities regulation which the Commission is tasked to perform and implement, i.e. securities regulations are in place to ensure the attainment of efficient financial markets and improve the allocation of resources in the economy[18]. In our jurisdiction, the said goal is translated in Section 2 of the SRC which provides for the state polices designed to "*establish a socially conscious, free market that regulates itself, encourage the widest participation of ownership in enterprises, enhance democratization of wealth, promote the development of the capital market, protect investors, ensure full and fair disclosure about securities, minimize if not totally eliminate insider trading and other fraudulent or manipulative devises.*"

In relation to the foregoing, the Supreme Court, in *Palanca vs RCBC Securities, Inc.*[19], emphasized that securities laws should be interpreted and implemented in the context of, and with the view of achieving the core principles/policies of the SRC, with investor protection being the unifying principle, to wit:

> "It has been observed that the afore-quoted provision lays down **seven core principles of our securities regulation laws: self-regulation, encouragement of the widest participation of ownership in enterprises, enhancement of the democratization of wealth, promotion of capital market development, protection of investors, ensuring full and fair disclosure about securities, and minimization, if not total elimination, of insider trading and other fraudulent or manipulative devices and practices that create distortions in the free market, with the unifying principle being the protection of investors. These core principles animate the whole of the SRC; and as such, any doubt or conflict in the interpretation of the SRC and its implementing rules must be resolved in a manner that will carry out the foregoing principles**. We therefore resolve the issues before Us with these principles in mind, giving particular

[18] See Jeffrey N. Gordon & Lewis A. Kornhauser, *Efficient Markets, Costly Information, and Securities Research,* 60 N.Y.U. L. Rev. 761. 802 (1985)
[19] G.R. No. 241905, March 11, 2020

attention to the principles of full disclosure, investor protection, and the elimination of fraudulent or manipulative devices and practices." (Emphasis supplied)

Considering that Trading Participants play an essential and critical role in these markets, the Commission has established, approved and implemented rules and regulations requiring them to act in a manner that is protective of the interests of their customers, the investing public, and other market participants. These rules, along with rules promulgated by the self-regulatory organizations (SROs) which include the Appellee CMIC, seek to ensure that Trading Participants operate, *inter alia*, in a financially sound manner, maintain adequate custody of customer assets, and refrain from deceptive and manipulative practices. The reason for this is simple: when investors feel that the securities market is regulated strictly in accordance with applicable laws, rules, and regulations, resulting in the maintenance of a fair and transparent financial market that protects investors from illegal, fraudulent, and manipulative practices, investors are encouraged to invest with ease and confidence. This atmosphere ushers the flow and development of capital of companies in the market and their assets, broadens and expands their operational and business activities, and ensures a reasonable return of investments on the part of investors. It is in this context that securities transactions are considered to be impressed with public interest and are subjected to strict regulation.[20]

In relation to the implementation and enforcement of the provisions of the SRC, its IRR, as well as the rules and regulations of the Exchange and SROs which include the CMIC Rules and the Implementing Guidelines (collectively, the "Securities Laws"), emphasis should be made of the fact that the Securities Laws are special laws, and under our jurisdiction; acts or omissions violating their provisions are considered *mala prohibita* which warrants the imposition of the appropriate penalties regardless of the absence of criminal intent.

It is therefore in the context of the foregoing important considerations that the Commission evaluated and passed upon the findings/conclusions of the CMIC in the Assailed Resolution, as well as the defenses proffered by Venture.

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[20] "Stock market transactions affect the general public and the national economy. The rise and fall of stock market indices reflect to a considerable degree the state of the economy. Trends in stock prices tend to herald changes in business conditions. Consequently, securities transactions are impressed with public interest, and are thus subject to public regulation." (*Abacus Securities Corporation vs Ampil*. G.R. No. 160016. February 27, 2006)

A. Venture violated Article IX, Section 1 (c) of the CMIC Rules, in relation to Article XVII (1) of the Implementing Guidelines.

A.1 Venture failed to record in the ledger of Mr. Sulapas the transactions that were executed and assigned to him using the PSE codes.

In its Appeal, Venture maintained that the forty-five (45) transactions that were executed using the PSE codes assigned to Mr. Sulapas were not recorded in his ledger because they were transactions of its other clients. Relative thereto, Venture claimed that it submitted/filed with the PSE system the required amendment reports showing that the said transactions were not of Mr. Sulapas. Thus, Venture insists that it did not violate Article IX, Section 1 (c) of the CMIC Rules, in relation to Article XVII (1) of the Implementing Guidelines, because it properly recorded the subject transactions in the ledgers of its client through the amendment reports. Venture argued that its failure to retrieve the said reports in the PSE system and to submit the same should not be taken against it because the same relates to the limitation on the PSE system.[21]

In its Comment, CMIC countered by arguing that the finding of violation was supported by substantial evidence consisting of the records which were attached to the show cause notice and the Assailed Resolution, all of which were verified by the Exchange.[22]

We rule against Venture.

Article IX, Section 1 (c) of the CMIC Rules, in relation to Article XVII (1) of the Implementing Guidelines of the Revised Trading Rules provides, to wit:

> "Article IX. Books and Records Rule
>
> Section 1. Books and Records Rule. In addition to the requirements of the Books and Records Rule under SRC Rule 52.1, a Trading Participant shall make, keep current and maintain in its principal office the following books and records relating to its business:

[21] Pars. 6.23 to 6.26 of the Appeal Memorandum
[22] Pars. 67 and 68 of the Comment

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> (c) Customer's Ledger – A Trading Participant shall have a Customer's Ledger reflecting all its assets and liabilities, and its income and expense and capital accounts, and from which a trial balance can be abstracted in order to prepare financial statements showing the Trading Participant's financial condition."

In the instant case, the records show that the subject transactions all utilized the PSE Codes assigned to Mr. Sulapas[23]. Considering that Venture failed to submit evidence showing that the reports containing the properly recorded transactions were in the system, Venture in effect failed to overcome the evidence submitted by CMIC showing that the forty-five (45) transactions that were executed using the PSE codes assigned to Mr. Sulapas were not recorded in his ledger. Venture's bare allegation that it submitted the required amendment reports showing that the said transactions were not of Mr. Sulapas, unsubstantiated by evidence emanating from the PSE system itself is self-serving. It is hornbook doctrine that "*mere allegation without sufficient proof is not evidence of the existence of a fact or of the truthfulness of an allegation*."[24] Given this, the Commission hereby sustains the finding of CMIC that Venture failed to comply with the Books and Records Rule.

A.2 Venture failed to show that the number of shares per transaction in the listing and/or unbundling report did not correspond to the entry recorded in the ledger, and to file the trade amendments.

In its Appeal, Venture maintained that it did not violate the rule because it allegedly recorded the correct volume of transactions in the corresponding ledgers of its clients and the amendment reports covering the same were submitted to the PSE system. Venture then reiterated its argument that its failure to retrieve the said reports in the PSE system and to submit the same in evidence should not be taken against it because the same relates to the limitation on the PSE system.[25]

In its Comment, CMIC argued that Venture's allegation which was unsubstantiated by evidence cannot overcome its finding of violation of the CMIC Rules.

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[23] Annex "E", Appeal Memorandum.
[24] *Arbilon v. Manlangit* (G.R. No. 197920, January 22, 2018)
[25] Pars. 6.30 and 6.31 of the Appeal Memorandum

The records affirm the finding of CMIC. Venture admitted, albeit not totally, having committed the violation when it stated that "*[f]or items under letter "b" above….we have no further remark on the result of the verification of CMIC as contained in the Resolution*."[26] It is in the context of the foregoing admission that Venture requested for modification and reduction of the monetary penalty, to wit:

> "xxx We request that the CMIC Board revise the Resolution such that **it should find that Venture committed a total of only eleven (11) violations** of Article IX, Section 1(c) of the CMIC Rules in relation to Article XVII(1) of the Implementing Guidelines of the Revised Trading Rules. Moreover, we request that CMIC Board revise the penalties imposed such that it should **impose WRITTEN REPRIMAND for Venture's first violation thereof, and a FINE of THIRTY THOUSAND PESOS (Ph30,000.00) for its second to eleventh violations**.[27] (Emphasis supplied)

On the basis of such admission, the number of violations found by CMIC in the Assailed Resolution must be sustained on the ground that Venture's bare allegation that it recorded the correct volume of transactions in the corresponding ledgers of its clients and submitted the amendment reports, unsubstantiated by evidence, cannot overcome the finding of CMIC that discrepancies in the volume of thirteen (13) specific transactions were not corrected.

A.3 Venture executed six (6) transactions using the PSE code of other clients, but recorded the same in the ledger of Mr. Sulapas.

In its Appeal, Venture maintained that CMIC erred in finding that it violated the Rules in relation to the Implementing Guidelines because it allegedly allocated the subject transactions to the correct client, and the amendment reports covering the same were submitted and filed with the PSE system. Venture then reiterated its argument that its failure to retrieve the said reports in the PSE system, and to submit the same in evidence should not be taken against it because the same relates to the limitation on the PSE system.[28]

The evidence on record militates against the position and arguments of Venture who admitted having committed the violation when it stated that "*we pointed out that 4 out of the 6 transactions were properly amended by us but we no longer could locate our records pertaining to these and that the*

[26] Par. 2 (page 7) of the Request for Reconsideration dated 11 August 2020
[27] Par. 2 (page 8) of the Request for Reconsideration dated 11 August 2020
[28] Pars. 6.34 to 6.37 of the Appeal Memorandum

amendment reports could no longer be retrieve by us from the online facility of the PSE. The 2 remaining transactions were only internally amended and no amendment report was submitted to the PSE."[29] It is in the context of the foregoing admission that Venture requested for modification and reduction of the monetary penalty in its Request for Reconsideration, to wit:

> "xxx We request that the CMIC Board revise the Resolution such that **it should find that Venture committed a total of only eleven (11) violations** of Article IX, Section 1(c) of the CMIC Rules in relation to Article XVII(1) of the Implementing Guidelines of the Revised Trading Rules. Moreover, we request that CMIC Board revise the penalties imposed such that it should **impose WRITTEN REPRIMAND for Venture's first violation thereof, and a FINE of THIRTY THOUSAND PESOS (Ph30,000.00) for its second to eleventh violations**.[30]

On the basis of such admission, the number of violations found by CMIC in the Assailed Resolution must be sustained on the ground that Venture's bare allegation that it allocated the subject transactions to the correct client and submitted the amendment reports, unsubstantiated by evidence cannot overcome the finding of CMIC that it executed six (6) transactions using the PSE code of other clients, but recorded the same in the ledger of Mr. Sulapas.

B. Venture violated Article VII, Section 1 (Q) of the CMIC Rules, in relation to Article IV, Section 4 (A) and Section 19 of the Revised Trading Rules and Article XVI (1) and (5) and Article XV (1) of the Implementing Guidelines.

B.1 Venture admitted that there were two hundred thirty-four (234) occasions where bundled transactions had been solely unbundled to one of the accounts of Mr. Sulapas.

In its Appeal, Venture argued that CMIC erred in penalizing it for the two hundred thirty-four (234) occasions where bundled transactions had been solely unbundled to one of the accounts of Mr. Sulapas because the same were previously cleared by CMIC, and the directive to stop this practice only came

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[29] *Ibid*
[30] Par. 2 (page 8) of the Request for Reconsideration dated 11 August 2020

later in 2019.[31] Venture is telling this Commission that a broker dealer or trading participant cannot be penalized for violating the Securities Laws if the violation was made possible because of the leniency of the Exchange or the SRO.

We do not agree with Venture.

Article VII, Section 1 (q) of the CMIC Rules, in relation to Article IV, Section 4 (a) and Section 19 of the Revised Trading Rules and Article XVI (1) and (5) of the Implementing Guidelines of the Revised Trading Rules provides, to wit;

> "Article VII. Customer Protection
>
> Section 1. Customer Account Information Rule. Every Trading Participant shall maintain customer accounts opened as follows:
>
> xxx
>
> (q) Trading Participants should also comply with the provisions on identification of Customers' Accounts and Orders through the Use of Code, Symbol or Account Number and Multiple Accounts contained in the Trading Rules of the Exchange."

At the outset, the records show that Venture admitted in its Appeal and in its two (2) Requests for Reconsideration that on two hundred thirty-four (234) occasions, bundled transactions had been solely unbundled to one of the accounts of Mr. Sulapas. This fact was confirmed by CMIC who emphasized that Venture's claim to the contrary was unsubstantiated by evidence. Venture however argued that such occurrence was acceptable and valid because it "*was regular practice/procedure at that time*."[32] Given this, We hold that the imposition of penalty for violation of the CMIC Rules in relation to the Implementing Guidelines is warranted based on the established rule that admissions are conclusive upon the party.[33] An act or omission that violates a

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[31] Par. 6.41 of the Memorandum on Appeal

[32] See page 10 of the Request for Reconsideration dated 11 August 2020

[33] "A stipulation of facts entered into by the prosecution and defense counsel during trial in open court is automatically reduced into writing and contained in the official transcript of the proceedings had in court. The conformity of the accused in the form of his signature affixed thereto is unnecessary in view of the fact that: "[…] an attorney who is employed to manage a party's conduct of a lawsuit […] has prima facie authority to make relevant admissions by pleadings, *by oral* or written *stipulation*, […] which unless allowed to be withdrawn are conclusive." (Italics supplied.) In fact, **"judicial admissions are frequently those of counsel or of the attorney of record, who is, for the purpose of the trial, the agent of his client. When such admissions are made […] for the purpose of dispensing with proof of some fact, […] they bind the client, whether made during, or even after, the trial**." (Silot vs De la Rosa. G.R. No. 159240. February 4, 2008)

law, rule or regulation can never become valid even if repeatedly practiced or done over a considerable period of time.

Moreover, as discussed and emphasized earlier, the Securities Laws are by nature special laws, and acts or omissions that violate their provisions are considered *mala prohibita* which is a punishable offense, thus:

> "The general rule is that acts punished under a special law are *malum prohibitum*. "An act which is declared *malum prohibitum,* malice or criminal intent is completely immaterial."
>
> In the case of *mala in se it is necessary, to constitute a punishable offense, for the person doing the act to have knowledge of the nature of his act and to have a criminal intent;* ***in the case of mala prohibita, unless such words as "knowingly" and "willfully" are contained in the statute, neither knowledge nor criminal intent is necessary***. In other words, a person morally quite innocent and with every intention of being a law-abiding citizen becomes a criminal, and liable to criminal penalties, if he does an act prohibited by these statutes.
>
> Hence, "*[i]ntent to commit the crime and intent to perpetrate the act must be distinguished.* A person may not have consciously intended to commit a crime; but he did intend to commit an act, and that act is, by the very nature of things, the crime itself[.]" **When an act is prohibited by a special law, it is considered injurious to public welfare, and the performance of the prohibited act is the crime itself**."[34] (Emphasis supplied)

The allegation and defense of Venture that it should not be penalized for its acts that violated Article VII, Section 1 (q) of the CMIC Rules because CMIC was in the past lenient in the implementation of the Securities Laws and impliedly cleared the same is thus bereft of any basis. An act or omission that fails to comply with or violates a law, rule, or regulation constitutes an offense that warrants the imposition of the prescribed penalties. The inaction or lenity of the Commission, Exchange or even the CMIC who are mandated to ensure compliance with Securities Laws, cannot and will not operate to justify the commission of violation of these laws. To sustain Venture's position would compromise the objectives and policies of the Securities Laws, destroy the integrity of the market, and prejudice investors. Moreover, we note with affirmation the argument of CMIC that Venture failed to show any proof that CMIC consented to such practice.

We also do not agree with Venture's contention that CMIC is estopped from penalizing Venture for the said violations on the basis of the findings in its subsequent investigation. Granting *ex gratia* that CMIC is already

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[34] Datu Guimid P. Matalam vs People of the Philippines. (G.R. Nos. 221849-50, April 04, 2016). See also SEC versus Oudine Santos, G. R. No. 195542, 19 March 2014.

estopped, this Commission may nonetheless proceed to impose the appropriate penalties pursuant to the doctrine in *Republic of the Phils. vs. CA, Sps. Santos, et al.*[35], to wit:

> "Estoppel against the public are little favored. They should not be invoked except in rare and unusual circumstances and may not be invoked where **they would operate to defeat the effective operation of a policy adopted to protect the public.** They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. Nevertheless, the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations . . ., the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals." (Emphasis supplied)

On the basis of the foregoing, Venture should be held liable and penalized for the two hundred thirty-four (234) occasions that the bundled transactions had been solely unbundled to one of the accounts of Mr. Sulapas.

B.2 Venture failed to include in the reports the two-hundred nine (209) bundled transactions that were identified by CMIC to have been executed for the accounts of Mr. Sulapas

In its Appeal, Venture maintained that CMIC committed reversible error in penalizing it for two hundred nine (209) bundled transactions that were executed for the account of Mr. Sulapas which were not stated in the unbundling reports on the ground that CMIC failed to show that it failed to maintain account codes exclusively catering to aggregated orders.[36]

The finding of the CMIC and the consequent imposition of the appropriate penalties should be sustained on the ground that except for the bare allegation of Venture that it submitted the required unbundling reports covering the hundred nine (209) transactions[37], no evidence was submitted in support thereof. In the absence of such evidence, Venture is deemed to have impliedly admitted violating the CMIC Rules because there are no unbundling reports on record which would prove Venture's compliance with the rules.

On the basis of such admission, the number of violations found by CMIC in the Assailed Resolution must be sustained on the ground that

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[35] GR No. 116111, January 21, 1999
[36] Par. 6.58 of the Memorandum on Appeal
[37] Par. 3 (page 11) of the Request for Reconsideration dated 11 August 2020

Venture's bare allegation that it maintained account codes exclusively catering to aggregated orders, unsubstantiated by evidence cannot overcome the finding of CMIC that it failed to include in the reports the two-hundred nine (209) bundled transactions that were executed for the accounts of Mr. Sulapas.

B.3 Venture recorded in the ledger of Mr. Sulapas six (6) transactions that were initially processed using a bundled account of other clients and were subsequently unbundled.

In its Appeal, Venture maintained that it cannot be held liable for effecting the six (6) transactions that were initially processed using a bundled account of other clients which were subsequently unbundled, and recorded in the ledger of Mr. Sulapas because the orders were properly identified.

The Commission cannot however, lend credence to the allegation and justification of Venture because the records show that the latter expressly admitted having violated the rule, to wit:

> "xxx In the Venture Reply Letter, we stated that these trades were duly amended to Sulapas account, **except for item nos. 3 and 4**. xxx **We reiterate herein our position that, except for item nos. 3 and 4**, we are certain that the trades enumerated in Annex "E" of the Resolution were duly amended by us through amendment reports submitted to the PSE."[38] (Emphasis supplied)

The afore-quoted statement/admission of Venture confirms that insofar as item nos. 3 and 4 of Annex "E" to the CMIC Resolution is concerned, it did not comply with CMIC Rules. Hence, Venture requested that the penalty be reconsidered and reduced by CMIC to cover only these violations, to wit:

> "xxx Moreover, we request that the CMIC Board revise the penalties imposed such that it should impose a WRITTEN REPRIMAND for Venture's first violation thereof, and a FINE of TWENTY THOUSAND PESOS (20,000.00) for its second to third violations."[39]

On the basis of such admission, the number of violations i.e. six (6) found by CMIC in the Assailed Resolution must be sustained on the ground that Venture's bare allegation that it properly identified and recorded the orders, unsubstantiated by evidence cannot overcome the finding of CMIC that it recorded in the ledger of Mr. Sulapas six (6) transactions that were

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[38] Par. 2 (page 12) of the Request for Reconsideration dated 11 August 2020
[39] *Ibid* (page 13)

initially processed using a bundled account of other clients and were subsequently unbundled. We hold that Venture's failure to produce and submit evidence showing that it indeed filed with the PSE the unbundling reports should not prejudice CMIC who presented evidence in support of its findings.

C. Venture violated Article V, Section 3 of the CMIC Rules.

In its Appeal, Ventures maintained that CMIC committed reversible error in finding that its traders and salesmen failed to comply with the provisions on Code of Conduct provided in the CMIC Rules, and argued that its traders and salesmen have observed all applicable regulatory laws, rules and regulations and are compliant with Venture's internal rules. This, according to Venture, was shown by the number of violations that it committed which was greatly reduced as it was able to provide justification. Venture also maintained that its traders and salesmen acted in good faith in relation to the subject transactions for which reason, the finding of violation by CMIC is without basis.

Venture's argument is not supported by the evidence on record.

Article V, Section 3 of the CMIC Rules provide, to wit:

> "Article V. Code of Conduct and Professional Ethics for Traders and Salesmen
>
> Section 3. Relationship of Traders and Salesmen to their Firm. The following principles should govern the relationship of traders and salesmen, and their Firm:
>
> (a) **Traders and salesmen should act and carry themselves in a manner that would promote and maintain the integrity of their firm, in particular, and the market, in general.**
>
> (b) **Traders and salesmen should observe all applicable regulatory laws, rules and regulations, comply with all regulatory requirements and abide by the internal rules of their firm at all times.**
>
> (c) A trader or salesman should be employed by only one Trading Participant at any given time." (Emphasis supplied)

Article V of the CMIC Rules provides for the Code of Conduct and Professional Ethics for traders and salesmen to ensure that the highest standard of ethics, honor and integrity among its trading participants, and the highest standards in the commercial and financial transactions are practiced and maintained for the protection of the investing public and the integrity of the capital market.

In the instant case, the records show that Venture effected and executed a considerable number of transactions which the CMIC found and substantiated to have violated the CMIC Rules in relation to the Implementing Guidelines. More importantly, these violations were admitted by Venture (although not in their entirety) as pointed out earlier. This fact and the number of violations found and established by CMIC effectively negates Venture's allegation that its traders and salesmen, who were all actively involved in the subject transactions, have observed all applicable regulatory laws, rules, and regulations and are compliant with Venture's internal rules.

Moreover, Venture's defense of good faith is unavailing in the instant case because as earlier discussed good faith is immaterial for acts punished under a special law.[40]

D. Venture violated Article VI, Section 1 (B)(II) of the CMIC Rules.

In its Appeal, Venture assailed the finding of CMIC that it failed to observe due diligence in executing its client orders consequent to its use of bundled accounts for the execution of orders; and to submit the unbundling reports and trade amendments. Venture insisted that it did not violate Article VI, Section 1 (B)(II) of the CMIC Rules because its use of a bundled account did not affect its ability to execute client orders on the best possible terms.[41]

In its Comment, CMIC countered by arguing that the facts and records show that Venture (a) used bundled accounts in executing the orders of just one client; (b) failed to submit unbundling reports and file trade amendments; (c) maintained inconsistent records in its back office, and (d) made conflicting trade amendment reports and unbundling reports.[42]

Article VI, Section 1 (B) (ii) of the CMIC Rules provides that a Registered Person, should act with due skill, care, and diligence in the conduct of his business activities, to wit:

"Article VI. Conduct Regulation of Trading Participants

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[40] Datu Guimid P. Matalam v. People of the Philippines. (G.R. Nos. 221849-50, April 04, 2016). See also SEC versus Oudine Santos, G. R. No. 195542, 19 March 2014.
[41] Par. 6.68 of the Memorandum on Appeal
[42] Par. 105 of the Comment

Section 1. Ethical Standards Rule. x x x

(b) In considering whether a Registered Person is conducting his business in an ethical and fair manner, CMIC, in addition to requirements imposed under other SRC Rules, will be guided by the following principles and requirements which incorporate International Organization of Securities Commission standards.

x x x

(ii) Diligence. In conducting his business activities, a Registered Person should act with due skill, care and diligence, in the best interest of his clients and for the integrity of the market.

(a) A Registered Person shall take all reasonable steps to promptly execute client orders and in conformity with the instruction of the client.

(b) A Registered Person when acting for or with a client shall always execute client orders on the best available terms in compliance with SRC Rule 32.2 (a).

(c) A Registered Person shall ensure that transactions executed on behalf of clients are promptly and fairly allocated to the accounts of the clients on whose behalf the transactions were executed.

(d) When providing advice to a client, a Registered Person shall act diligently and ensure that his advice and recommendations in relation to clients are based on through analysis and take into account available alternatives." (Emphasis supplied)

It bears emphasis that the development and integrity of the market also depends on the reliability of the records of its Trade Participants for it is in the proper and dutiful upkeep of these documents that the investing public derives confidence to participate in the economic activity and invest their hard earned money.

As pointed out and discussed earlier, Venture admitted that (a) it failed to record the correct volume of transactions in the corresponding ledgers of its clients and to submit the amendment reports covering the same[43]; (b) it failed to allocate the subject transactions to the correct client and submitted the amendment reports[44]; (c) the bundled transactions had been solely unbundled to one of the accounts of Mr. Sulapas[45]; (d) it failed to maintain

[43] See discussion in A.2 above
[44] See discussion in A.3 above
[45] See discussion in B.1 above

account codes exclusively catering to aggregated orders[46]; and (e) it recorded in the ledger of Mr. Sulapas transactions that were initially processed using a bundled account of other clients and were subsequently unbundled[47]. These admissions and the fact that, as pointed out by the CMIC, Venture failed to submit evidence in support of its defense show that the latter failed to observe due diligence in executing its client orders, as required under the CMIC Rules. The Commission thus sees no cogent reason to disturb the findings of CMIC and the imposition of the appropriate penalty.

E. **Venture violated Article VI, Section 2 (B) of the CMIC Rules**

In its Appeal, Venture maintained that the CMIC committed reversible error in finding that its Associated Person failed to comply with the rule on supervision because there was allegedly no "pervasive" violations of the CMIC Rules. Venture further argued that the alleged violations of the trading participants were made possible by its Associated Person's (Ms. Adora Aguilar) reliance in good faith on the results of the CMIC audits, and not on her failure to properly supervise the trading participants. Venture is in effect telling this Commission that the responsibility and the consequent liability of Associated Persons are dependent on the general audit findings of the CMIC such that, even if there is already a clear and admitted violation, Associated Persons cannot be penalized if they rely in good faith on such audit findings.

Venture's argument is devoid of merit and basis.

Article VI, Section 2 (b) of the CMIC Rules which provides, to wit:

> "**Associated Persons shall be responsible**, in addition to the duties enumerated under SRC Rule 28.1(4)(G) **for maintaining a system to supervise the activities of all persons employed by the Trading Participant** who are directly or indirectly related to the conduct of its securities business." (Emphasis supplied)

The afore-quoted provision expressly directs and reposes upon Associated Persons the responsibility of maintaining a system of supervision that ensures full compliance by all persons employed by the Trading Participants with Securities Laws. Contrary to the position of Venture which suggests a passive kind of supervision where Associate Persons are dependent on the audit findings of the regulator, the afore-quoted provision clearly provides that Associated Persons are to be proactive in implementing and

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[46] See discussion in B.2 above
[47] See discussion in B.3 above

maintaining a system where all transactions are reasonably assured to comply with applicable laws, rules, and regulations before they are executed. Associated Persons are thus tasked, among others, to conduct regular internal inspections and reviews of the Trading Participant's transaction, records and procedures, conduct investigations, and review customer complaints.

In the instant case, the number and nature of the violations committed by Venture show that its Associated Person has been remiss in her obligation to implement and maintain a system of supervision. The failure of its Associated Person to effectively supervise the activities of persons under Venture's employ is clearly manifest in the justification that Venture provided i.e. its Associated Person relied in good faith on the results of CMIC's general audits and did not thus bother to conduct a regular and independent review/investigation of its records, transactions. or processes. This clearly constituted a violation of Article VI, Section 2 (b) of the CMIC Rules.

On account thereof, the Commission sustains the finding of CMIC and the imposition of the appropriate penalty.

F. Venture violated Article VI, Section 1 (B)(IV) of the CMIC Rules.

In the Assailed Resolution, CMIC found Venture to have violated the KYC Rule because it did not ascertain the "financial situation" of Mr. Sulapas. In particular, it allegedly failed to verify and explain how Mr. Sulapas executed single-day transactions which are greatly disproportionate to his declared net worth and income, considering that his lowest transaction amounted to ₱10,560,000.00 while his other transactions went as high as ₱45,814,010.00.[48] CMIC found that Mr. Sulapas' trades cannot be supported by his liquid net worth, total net worth, and annual income which were respectively worth less than ₱1,000,000.00, as declared in his CAIF.

In its Appeal, Venture maintained that CMIC's reliance on the CAIF is not supported by the SRC-IRR which requires Venture to "*take all reasonable steps to establish the true and full identity of each of his clients, their financial situation, investment experience and investment objectives*." Consistent with the foregoing policy, Venture alleged to have closely followed and analyzed the transactions executed by Mr. Sulapas from 2012 to 2019 which led it to conclude that his trading patterns and objectives were not inconsistent with his declared financial condition. Considering that Mr. Sulapas was an active trader who appeared to be a knowledgeable and responsible trader, Venture

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[48] Par. 53, Comment to Appeal Memorandum; Annex "4", Comment to Appeal Memorandum.

was led to the conclusion, and became confident, that the aggregate value of the shares that he bought and sold from 2012 up to 2018 was not unusual.[49]

Article VI, Section 1 (B)(IV) of the CMIC Rules provides:

"**Section 1.** ***Ethical Standards Rule.*** —

xxx

(b) In considering whether a Registered Person is conducting his business in an ethical and fair manner, CMIC, in addition to requirements imposed under other SRC Rules, will be guided by the following principles and requirements which incorporate International Organization of Securities Commission [IOSCO] standards.

Xxx

(iv) Information about clients

xxx

(b) A Registered Person shall take **<u>all</u> reasonable steps <u>to establish the true and full identity of each of his clients, their financial situation, investment experience, and investment objectives</u>**.

xxx

(e) A Registered Person should be reasonably satisfied about the identity, address, and contact details of the person ultimately responsible for originating the instruction in relation to a transaction, the person who stands to gain the commercial or economic benefit of the transaction, and/or bears the commercial or economic risk; provided, however, that in relation to an investment company, or discretionary account, the person referred to above is the investment company or account, not those who hold a beneficial interest therein.

xxx

(g) A Registered Person shall not do anything to effect a transaction unless he has first complied with the requirements of this rule, as required in SRC Rule 30.2, paragraph 4.

At the outset, it is surprising to note how Venture exerted considerable amount of effort in convincing CMIC and this Commission that notwithstanding the information provided in the CAIF of Mr. Sulapas, the

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[49] Pars. 6.12 to 6.17 of the Appeal Memorandum

trading activities/transactions of the latter was worthy of full credence and confidence because "*his trading pattern and objective if seen in the manner by which it started and progressed since 2012 up to 2019 were not inconsistent with his initially declared financial condition*." Venture is in effect telling this Commission that the financial capacity as provided in the CAIF, as well as the annual and the average daily trading transactions of a person can be altogether disregarded, and broker dealers can dispense with the continuing requirement of complying with the KYC Rule if they see that the client's trading pattern and objective is consistent with his/her financial condition.

The KYC guidelines which have been incorporated and adopted in the CMIC Rules was intended to ensure that securities transactions are not used for money laundering, terrorist financing, drug trafficking, and other illegal acts. The KYC rules and guidelines are thus specifically intended (a) to deter criminals posing as legitimate customers who would use financial institutions as tools to launder proceeds from their illicit activities, (b) to unmask or reveal the illicit nature of a customer's business, and (c) to obtain and store information of a customer in a database that will indicate/show when transactions are inconsistent with customer's normal business transactions or financial capacity.[50] **From this perspective, it is clear that the responsibility of Trading Participants in relation to KYC rules and guidelines is intended to be continuing and regular to ensure that client information is updated and current.** In *COL Financial Group, Inc. vs. Capital Markets Integrity Corporation*,[51] this Commission reiterated the said objectives, thus:

> "**Know Your Customer is not just for the benefit of the Trading Participant** (i.e. COL FINANCIAL). As mentioned by the EIPD, **the KYC Rule is in place to prevent money laundering and other illegal acts**. It is consistently required by the IOSCO, the SRC-IRR, and the CMIC. **In other words, the KYC Rule is for the benefit of the whole financial community, if not the whole country, and falls within the Commission's broad mandate to preserve the integrity of the capital markets.**" (Emphasis supplied)

Relative thereto, the 2015 Implementing Rules and Regulations of the Securities Regulation Code (2015 SRC Rules) requires the updating of all existing CAIFs within the period specified therein, thus:

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[50] Daniel Mulligan, *Know Your Customer Regulations and the International Banking System: Towards a General Regulatory Regime*, Fordham International Law Journal, Volume 22, Issue 5, Article 11 (1998). URL: https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1647&context=ilj&httpsredir=1&referer=
[51] Decision dated 26 September 2019, SEC En Banc Case No. 07-15-377.

> "All existing CAIFs shall be updated within one hundred eighty (180) days after the effectivity of these amendment and every two (2) years subsequent thereto"[52].

In the instant case, the records show that Mr. Sulapas has declared in his CAIF that his liquid net worth, total net worth, and annual income are respectively worth less than One Million Pesos (₱1,000,000.00). Mr. Sulapas has not updated his CAIF since 2012 and Venture was well aware of this fact. However, Venture nonetheless continued to allow Mr. Sulapas to trade in amounts that ballooned through the years on the basis of the CAIF submitted in 2012. This, from the perspective of the Commission based on the intent and purpose of the Securities Laws, constitutes a violation of the KYC rules and guidelines because Venture clearly failed to continuously verify and conduct regular due diligence on the financial capacity and situation of Mr. Sulapas. Venture's conclusion in the year 2020 that Mr. Sulapas was an active trader who appeared to be a knowledgeable and responsible trader, and whose aggregate value of shares traded through the years was not unusual is not based on the current financial information of Mr. Sulapas which is what is required by the Securities Laws.

In the absence of an updated CAIF of Mr. Sulapas in the records of Venture, which is an essential component in KYC regulation, Venture can be considered to have failed in updating itself on the changes in the financial situation of Mr. Sulapas, in violation of the CMIC Rules. Thus, the Commission finds that CMIC did not err in penalizing Venture on the basis of such violation.

Finally, the Commission finds that Venture's argument that CMIC is barred from penalizing the Trading Participant for transactions that occurred more than five (5) years from the time of the special audit pursuant to Article 1149 of the Civil Code[53], is misplaced.

The records show that Venture recognized and submitted to the jurisdiction of the CMIC when it voluntarily submitted to the latter its internal records (which included documents for the year 2012 which was clearly beyond the five (5) year prescriptive period) for purposes of the conduct of the special audit. We thus agree with CMIC that Venture is now estopped from assailing the authority of CMIC to pass upon the matters covered by the special audit, after it has consented to be audited by and subjected to the jurisdiction of CMIC.

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[52] Rule 52.1.6.13 of the 2015 SRC Rules.

[53] "Article 1149. **All other actions whose periods are not fixed in this Code or in other laws** must be brought within five years from the time the right of action accrues."

Even assuming ex gratia that Article 1149 of the Civil Code applies, the same must be read together with Article 1150 thereof, which states:

> "Article 1150. **The time for prescription for all kinds of actions**, when there is no special provision which ordains otherwise, **shall be counted from the day they may be brought**. (Emphasis supplied)

In *Anchor Savings Bank vs. Furigay, et al.*,[54] the Supreme Court held that "it is the legal possibility of bringing the action which determines the starting point for the computation of the prescriptive period for the action."

In the instant case, CMIC could not have initiated any administrative action at the time the transactions were executed because it did not have any knowledge of the same. Indeed, it would have been impossible for CMIC to commence any administrative actions against Venture without any evidence that would indicate that a possible violation has been committed. It was only after CMIC received information from R&L that most of its shares were "wiped out" by Mr. Moron who admitted having transferring shares to a certain account in Venture under the name of Mr. Sulapas, that the possibility of instituting an administrative action arose. Otherwise stated, the five (5) year period did not run from the execution of the transaction but from the discovery of the same. To hold otherwise would render the CMIC powerless in running after and punishing errant Trading Participants and their clients because it cannot reasonably be expected to be aware of every transaction that Trading Participants execute. This is precisely the reason why the CMIC is empowered to conduct special audits to effectively perform its mandate and function as the compliance arm of the PSE.

On the basis of the foregoing disquisitions, the Commission finds no cogent reason to disturb the findings of the CMIC which were supported and proven by substantial evidence.

WHEREFORE, premises considered, the *Memorandum of Appeal (With Extremely Urgent Application for a Preliminary Writ of Injunction)* filed by Venture Securities, Inc. is hereby **DENIED** for lack of merit. The Assailed Resolutions of the CMIC are hereby **AFFIRMED**.

SO ORDERED.

Pasay City, 15 June 2021.

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[54] G.R. No. 191178, March 13, 2013.

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EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner